



Virginia
Regulatory
Town Hall

Notice of Intended Regulatory Action Agency Background Document

Agency Name:	Child Day-Care Council
VAC Chapter Number:	22 VAC 15-51-10 et seq.
Regulation Title:	Minimum Standards for Background Checks for Licensed Child Day Centers
Action Title:	Changes to conform with Code of Virginia
Date:	September 13, 2002

This information is required prior to the submission to the Registrar of Regulations of a Notice of Intended Regulatory Action (NOIRA) pursuant to the Administrative Process Act § 9-6.14:7.1 (B). Please refer to Executive Order Twenty-Five (98) and Executive Order Fifty-Eight (99) for more information.

Purpose

Please describe the subject matter and intent of the planned regulation. This description should include a brief explanation of the need for and the goals of the new or amended regulation.

The regulation establishes requirements for background checks for criminal convictions and founded complaints of child abuse and neglect for licensed child day centers. It prohibits the licensing of new child day centers when designated persons associated with the center have certain criminal convictions or have ever been the subject of a founded complaint of child abuse or neglect. Centers are prohibited from using a person for certain roles if the person has certain criminal convictions or has ever been the subject of a founded complaint of child abuse or neglect.

The Regulation for Criminal Record Checks for Child Welfare Agencies, 22 VAC 15-50-10 et seq. is being repealed. The revisions required to amend 22 VAC 15-50-10 et seq. are so extensive that it is more efficient to repeal the existing regulation and promulgate a new regulation. The proposed new regulation includes relevant *Code of Virginia (Code)* changes since 1995, including recodification language that will become effective as of October 2002. It separates licensed child day center regulations from regulations for other child welfare agencies. This provides clarification of the regulation requirements for persons employed or volunteering

at a child day center and to persons and agencies required to be licensed to operate a child day center.

Basis

Please identify the state and/or federal source of legal authority to promulgate the contemplated regulation. The discussion of this authority should include a description of its scope and the extent to which the authority is mandatory or discretionary. The correlation between the proposed regulatory action and the legal authority identified above should be explained. Full citations of legal authority and, if available, web site addresses for locating the text of the cited authority must be provided.

Statutory Authority: §§63.2-1734 and 63.2-1735 of the *Code*.

Section 63.2-1735 of the *Code* gives the Child Day-Care Council the statutory authority to adopt regulations for the operation of child day centers in Virginia. This is in accordance with the regulation referred to in § 63.2.1734 which states “The Board, or in the case of child day centers, the Child Day-Care Council shall adopt regulations for the activities, services and facilities to be employed by persons and agencies required to be licensed under this subtitle, which shall be designed to ensure that such activities, services and facilities are conducive to the welfare of children under the custody or control of such persons or agencies.” *Code* sections 63.2-1719 through 63.2-1723 establish background checks for criminal convictions and founded complaints of child abuse or neglect and set prohibitions if a person is found to have certain criminal convictions or has ever been the subject of a founded complaint of child abuse or neglect. These sections apply to applicants for licensure, issuing or refusing a license, and employees and volunteers of licensed child day centers.

Substance

Please detail any changes that would be implemented: this discussion should include a summary of the proposed regulatory action where a new regulation is being promulgated; where existing provisions of a regulation are being amended, the statement should explain how the existing regulation will be changed. The statement should set forth the specific reasons the agency has determined that the proposed regulatory action would be essential to protect the health, safety or welfare of citizens. In addition, a statement delineating any potential issues that may need to be addressed as the regulation is developed shall be supplied.

The regulation’s name is changed to “Background Checks” to be consistent with the recodification of Title 63.1. Clarity changes will be made throughout the regulation to delete the terms “State Board of Social Services” and “agencies” when appropriate. In addition, the following are: (i) new requirements added to reflect the changes made in the recodification of Title 63.1 which becomes effective October 1, 2002; (ii) changes made to reflect language in the current *Code* which were previously not addressed; and (iii) deletion of definitions and requirements not applicable to licensed child day centers. Standards or portions of standards will be moved or revised within the regulation for purposes of continuity and clarity.

22 VAC 15-51-10. Definitions as used in this regulation

Amend the definition of “applicant for licensure” to apply only to child day centers.

Add a definition for “background checks” which is the term used in the recodification of Title 63.1.

Amend the definition of “barrier crimes” to include all crimes as defined in §63.2-1719 of the *Code*. These crimes will be listed in 22-VAC 15-51-20.

Add the definitions “central registry report” and “child abuse and neglect central registry” to be consistent with the *Code*.

Add a definition of “child day center (center)” that clarifies which facilities are covered by the regulation. This replaces the former definition of “facility.”

Add the definition of “commissioner” which is used in the regulation.

Add the definition “contract agency” to clarify that this is an entity with which a parent or center has an agreement. This will include temporary agencies.

Delete “contracting organization.” This term is not used in the regulation.

Add the definition “contract employee” to clarify that this is a person with whom the parent has the agreement, but the service is being delivered to the child at the center.

Add the definition “department” to refer to the Department of Social Services.

The Council will consider adding a definition of disqualifying background, based on public comment.

Revise the definition of “employee” to no longer include contract employees. “Contract employees” will have a separate definition.

Add a definition of “involved in day-to-day operations” that identifies which individuals require a background check.

Add a definition for “licensed” that clarifies that only those child day centers applying for licensure or licensed through the department are covered by the regulation.

Add a definition of “offense” that clarifies that both barrier crimes and convictions of other felonies within the last five years are to be included in the criminal history record check.

Delete the definition of “officer of the board.” This term is not used in the regulation.

Add a definition of “staff volunteer” that clarifies which volunteers need a background check and incorporates the exception for parent-volunteers. This will replace the former definitions of “volunteer” and “parent-volunteer.”

Amend the definition of “sworn statement or affirmation” to be consistent with the wording in the Code recodification.

22 VAC 15-51-20 Barrier crimes specified by Code of Virginia

Update the list of barrier crimes to include all crimes specified by § 63.2-1719 of the *Code*.

Add a standard that any felony convictions within the last five years disqualify certain individuals from operating, working at, or volunteering with a licensed child day center. Clarify what these convictions shall include.

22 VAC 15-51-30 Background checks at initial application for licensure

Modify and expand the standard to clarify who must receive background checks prior to licensure.

Add a standard that the Commissioner must provide a copy of the disqualifying information if the center is denied licensure because of a background check. This standard is added to meet new Code requirements.

Delete the requirement for a sworn statement or affirmation to be attached to and filed with the criminal record report. This is not required by *Code*.

22 VAC 15-51- 40 Background checks after initial licensure

Add a standard that prohibits a center from retaining for employment or volunteering a person with a known disqualifying background.

Delete the requirement for all board members to have background checks. This is to conform with the Code recodification.

Add a table that clarifies which employees, contract employees, and volunteers shall receive a background check. The table also states when these shall be obtained and reflects the change from 21 days to 30 days.

The Council will accept public comment on adding a standard to allow original background checks of contract agencies to be viewed, verified, and copies maintained. The standard would require these checks be accepted if they are dated not more than 6 months prior to the date of when the contractor begins providing services at the center. This would be a cost-effective change.

Revise the standard to require verification of background checks, rather than obtaining the actual documents for substitute staff at contract agencies.

Add a standard that the center will not be penalized for not obtaining background checks if they have been applied for timely. This is to be consistent with *Code* changes.

22 VAC 15-51- 50 Prohibited acts

Add a standard that clarifies when the department may deny or revoke a license. This is added because of Code recodification.

Add a standard to clarify when the department is permitted to release information regarding a person's disqualifying background to centers that have a legitimate interest. This is added to conform to the *Code*.

Add a requirement that the center shall provide information from the central registry on convictions appearing on his criminal history record to any person denied employment because of a disqualifying background. This is to be consistent with the Code recodification.

Add a standard that will prohibit civil damages against any person who complies with the provisions of the regulation. Delete the requirement that the center be responsible for ensuring that the employee does not have a disqualifying background when the criminal history report has been filed. This standard is added to be consistent with Code recodification.

22 VAC 15-51- 60 Verifying background checks

Add a table that clarifies the criteria for determining when background checks are considered valid. The criteria also will allow for copies of the central registry report to be accepted.

Revise the standard to clarify that the center designee shall be charged with knowledge of all information in an individual's background checks file. Delete the requirement that a new check shall be required if information in the check does not match that provided by the person. This is not required by the *Code*.

Delete the requirement that the criminal record reports be kept in locked files. This is not required by the *Code*.

Add a standard that further dissemination of the background check information is prohibited other than to the Commissioner's representative or as may be required by law. This is to conform with a change in the *Code*.

22 VAC 15-51- 70 Duration of background checks

Add the standard that the center shall retain the background reports when an employee terminates. Delete the standard that states reports shall not be valid when an individual goes from one center to another. This is addressed by other requirements in the regulation.

Expand the standard to allow a background check to remain valid as long as the period of separation does not exceed six consecutive months if the reason for separation includes termination or transfer to a center owned and operated by the same entity. This would be a cost-effective change.

22 VAC 15-51- 80 Maintenance of background checks

Add a standard that clarifies requirements for maintenance of background checks when employees work at multiple centers. Add a standard that requires any copy of the criminal record report to carry a statement that the center designee has viewed and verified the original.

Modify the requirement for record retention to be consistent with the *Minimum Standards for Licensed Child Day Centers*.

22 VAC 15-51- 90 Waiver

Add a statement that the State Board of Social Services will adopt regulations to implement the provisions of this section.

Alternatives

Please describe, to the extent known, the specific alternatives to the proposal that have been considered or will be considered to meet the essential purpose of the action.

The following alternatives to the proposed chapter were considered.

- Promulgate no regulation.

Significant changes to the *Code* have been mandated since the 1998 General Assembly. The current 22 VAC 15-50-10 et seq. does not address these additional mandates.

- Promulgate the 22 VAC 15-50-10 et seq. emergency regulation from 1999 as the proposed regulation.

Public comment suggested the need for organizational, content, and clarification changes. Several questions from providers and state agency staff indicated where clarifications were needed. In addition, the changes in the *Code* due to recodification are not included in the emergency regulation.

- Amend 22 VAC 15-50-10 et seq., Regulation for Criminal Record Checks for Child Welfare Agencies

The revisions required to amend 22 VAC 15-50-10 et seq. are so extensive that it is more efficient to repeal the existing regulation and promulgate a new regulation. Criminal Record Checks for Child Welfare Agencies, 22 VAC 15-50-10 et seq. is being repealed.